

Ithaca College and Ithaca College Faculty Association, NYSUT—AFT, Petitioner. Case 3-RC-7896

April 30, 1982

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on 27 days beginning December 15, 1980, and concluding February 26, 1981, before Hearing Officers Doren G. Goldstone and Michael Cooperman, respectively. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 2 transferred this case to the Board for decision. Thereafter, the Employer and Petitioner filed briefs.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officers' rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer was stipulated by the parties to be engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We find that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Ithaca College Faculty Association, NYSUT—AFT, is not a labor organization within the meaning of Section 2(5) of the Act.²

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. Petitioner seeks to represent a unit of all full-time faculty employed by Ithaca College at its Ithaca, New York, location and at the Albert Einstein Medical Center in New York City, including professional librarians and those faculty members possessing professional staff appointments, but excluding all guards, confidential employees, part-time faculty, and supervisors as defined in the Act. The College, however, contends that the faculty

members are managerial employees within the meaning of *N.L.R.B. v. Yeshiva University*, 444 U.S. 672 (1980), and that the department chairpersons are supervisors. For the reasons set forth below, we shall dismiss the petition.

The College is a private, nonprofit institution of higher education comprised of six schools³ and the Division of Graduate Studies, Education, and Continuing Education. A central administrative hierarchy is ultimately governed by the Board of Trustees. The president of the College is a member of the Board of Trustees, and is assisted by a provost, who is the chief academic officer of the College, a treasurer-controller, and vice presidents for student affairs, business affairs, and college relations and resource development. A collegewide Academic Policy Committee is composed of three representatives from each school—a faculty member (selected by the school's faculty), the dean, and a student. The library director also sits on this committee, which reviews proposals made by the faculties of the various schools concerning changes in academic policy or curriculum. The committee has no authority either to initiate such proposals or to finally reject them, but may return a proposal to the school for clarification or revision. The committee's work is carried out in substantial part by two subcommittees which are composed entirely of faculty members. Thus, the various school's curricular proposals are considered by the Curriculum Review Subcommittee, and collegewide academic policy issues are reviewed by the Policy Subcommittee. The recommendations of these faculty subcommittees invariably have been followed by the committee.

Once a proposal has been approved by the Academic Policy Committee, it is submitted to the Faculty Council for consideration. The Council is an elected body composed of faculty representatives of each academic unit. In addition to considering proposals forwarded to it by the Academic Policy Committee, the Council conducts the elections of faculty members who serve on the several collegewide committees, and reviews the recommendations made by such committees.

Each of the schools also has various faculty committees of its own which are free to and have established a wide range of policies affecting their own operations. In some schools such policymaking is conducted in subcommittees, while in others the entire faculty participates directly. The decision whether to operate through subcommittees or some other formal structure is left to the faculty of each

¹ The Employer also filed a request for oral argument. We hereby deny this request as the record and the briefs adequately present the issues and positions of the parties.

² In light of our finding, *infra*, that the faculty members seeking representation are managerial employees, and since it appears that Petitioner is comprised solely of the managerial employees involved herein, we find that Petitioner does not represent statutory employees and therefore is not a labor organization within the meaning of the Act.

³ These are the Schools of music; Humanities and Sciences; Allied Health Professions; Business; Health, Physical Education and Recreation; and Communications.

school. In each of the schools and the one division, the faculty determines the curriculum. It decides what courses will be offered, and the credit hours, class size, and prerequisites for each. The faculty has the authority to modify or add to the curriculum. In some schools, faculty recommendations regarding curricular changes require the approval of the dean; such approval, however, is routinely forthcoming. In the School of Humanities and Sciences, for example, the dean has approved every one of an estimated 500 such recommendations made to him by the faculty. The faculties schedule courses and determine teaching assignments. The faculties also set academic policies, and individual schools are empowered to adopt provisions which are more restrictive than those applicable collegewide. In this regard, policies relating to academic standing, graduation requirements, grading, attendance, course distribution requirements, and examinations are effectively determined by the faculties, and policies in these areas cannot be implemented without faculty approval. The various faculties also control the admission of students into their respective schools. They are free to establish admissions standards higher than those prescribed for the College generally, and some schools have done so.

The authority of the faculties also extends beyond the strictly academic areas discussed above. The College's faculties effectively control faculty hiring and tenure. Thus, virtually all of their recommendations to the administration (typically a dean) with respect to such matters have been followed. Faculty authority in hiring has extended not only to the filling of faculty positions, but also to the selection of administrators as well; faculty search committee recommendations have been effective in the selection of deans in each of the six schools. The criteria for tenure and promotion are developed by the faculty within each school, and each has a faculty committee which makes recommendations to the dean of the school. The dean then adds his own recommendations and forwards the candidate's file to the College Tenure and Promotion Committee. This committee, established in 1977 at the recommendation of the president, reviews all tenure and promotion recommendations. It is composed of five faculty members. The committee prepares a recommendation and sends the file to the provost, who also makes a recommendation and then submits the file to the president for consideration and final approval by the Board of Trustees. Since its creation, the committee has reviewed 47 tenure candidates and 73 promotion candidates. Its recommendations have been followed in 119 of the 120 cases.

The faculties participate in the formulation of their budgets and also effectively determine which incoming undergraduate students will receive financial aid in some schools, and which students will receive teaching assistantships in others. The faculties have also played an effective role in planning and designing new facilities and modifications to the existing physical plant. Effective faculty recommendations have led to construction of a new building for the school of Allied Health Professions, renovation and construction of new facilities for the School of Humanities and Sciences, and a variety of other smaller projects.

In *Yeshiva*, the Supreme Court found that the faculty effectively determined the curriculum, grading system, admission and matriculation standards, academic calendars, and course schedules. The Court additionally noted that the faculty's authority extended beyond strictly academic areas to such matters as hiring, tenure, sabbaticals, terminations, and promotions. Although the administration retained the power to make final decisions, the Court found that the overwhelming majority of faculty recommendations were followed. Based on its findings, the Court held that the faculty members in *Yeshiva* exercised managerial authority and thus did not constitute an appropriate unit.

We find that the faculty here possesses and exercises authority similar to that possessed and exercised by the faculty in *Yeshiva*. Thus, the record reveals that the faculties of each of the College's schools and the Division of Graduate Studies have extensive authority to formulate and effectuate policies for their respective schools, both through their individual school committees and through participation in the larger college scheme of governance involving the Academic Policies Committee and the college Faculty Council. The Employer has demonstrated that the faculty has absolute authority as to the College's curriculum, including course offerings, prerequisites, credit hours, class size, course schedules, and faculty teaching assignments. The faculty also determines the College's academic policies concerning, *inter alia*, admissions standards, academic standing, graduation requirements, grading, attendance, course distribution requirements, and examinations. In addition, the faculty possesses substantial authority in spheres beyond the strictly academic. Thus, the faculty controls the hiring of faculty, as well as deans, and faculty tenure, and has an effective voice in budgetary matters and facilities planning. In view of all of the foregoing, and the record as a whole, we find that the unit sought by Petitioner is composed

of managerial employees.⁴ Accordingly, we shall dismiss the petition.

⁴ Since we have concluded that the faculty members are managerial employees, we find it unnecessary to reach the issue of whether depart-

ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

ment chairpersons are supervisors within the meaning of Sec. 2(11) of the Act.